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Plaintiff NATERA, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA,  
SAN FRANCISCO DIVISION

GUARDANT HEALTH, INC.  
  
Plaintiff and  
Counterclaim-Defendant,

vs.

NATERA, INC.

Defendant and  
Counterclaim-Plaintiff.

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CASE NO. 3:21-CV-04062-EMC

**NATERA, INC.'S PROFFER OF  
EXCLUDED EVIDENCE**

**REDACTED FOR PUBLIC FILING**

1 Natera respectfully submits this proffer of excluded evidence. The exhibits and/or testimony  
 2 excluded by the Court's evidentiary rulings are attached to the accompanying Declaration of Kaitlin  
 3 E. Keohane. This evidence was excluded over Natera's objections, as stated on the record. Natera  
 4 reserves the right to supplement its proffer of excluded evidence.

- 5 • Guardant's Response to Interrogatory No. 25 (Proffer Exhibit A), which  
 6 authenticated Trial Exhibits 1808, 1809, 1810 (admitted into evidence without  
 7 objection), and 1811, and would have been relevant to showing the extent of  
 8 Guardant's false advertising, and its effects on Natera.
- 9 • Exhibits disclosed to be introduced through Dr. Metzker, specifically TX 560, TX  
 10 587, TX 687, TX 691, TX 692, TX 693, TX 697, TX 699, TX 700, TX 900, TX 981,  
 11 TX 984, and TX 1478, which would have been relevant to showing the Parikh study  
 12 was not blinded or prospective.
- 13 • Guardant's earning call transcript, TX 1771, which is relevant to rebut Dr.  
 14 Eltoukhy's testimony that Natera's conduct harmed Guardant or deprived patients of  
 15 access to Reveal. Tr. 796:1-12.
- 16 • TX 145 (Guardant – Specific Responses to the questions posed in the 6/28 email)  
 17 and TX 612 (Email from Eagle re: Guardant Reveal Technical Assessment  
 18 Submission), which are relevant to Guardant's knowledge of its relative performance  
 19 as compared to Signatera, and the falsity of claims in Guardant's advertising.
- 20 • AmirAli Talasaz's LinkedIn post and subsequent apology letter, TX 1794 and 1795,  
 21 which are relevant to Guardant's beliefs regarding appropriate conduct among  
 22 competitors.
- 23 • TX 1786 and 1787, the second Parikh Study, which is relevant to the Parikh Study's  
 24 characterization as a prospective, rather than retrospective, study.
- 25 • Testimony related to Guardant Reveal's [REDACTED]  
 26 [REDACTED], in 2023. Tr. 955:2-23; Tr. 1358:22-1360:14. The fact that  
 27 Guardant Reveal [REDACTED]  
 28 [REDACTED] is relevant to Guardant's claim for prospective  
 corrective advertising damages.
- Testimony regarding Guardant's statement in an email that [REDACTED]  
 [REDACTED] Tr. 948:12-19. As well as testimony regarding  
 Guardant employees' [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] Tr. 1565:21-1566:20.
- Testimony regarding Dr. Eltoukhy's personal income during the 2020-2021  
 timeframe (Tr. 758:12-759:7), which is relevant to Guardant's claim that Natera  
 caused it harm and deprived patients of tests, as well as Dr. Eltoukhy's bias.

- 1 • Testimony from Natera’s expert regarding the scope of Medicare coverage that  
2 Guardant Reveal has obtained, when it was sought and obtained, and the impact of  
3 Guardant’s expert’s assumptions regarding damages. Tr. 1578:3-20, Rough Tr. Day  
4 8 104:11-104:15, 106:12-17. This testimony is relevant to rebut Guardant’s  
5 representations regarding the impact of statements made by Natera to MolDX,  
6 including causation related to the disgorgement damages Guardant is seeking from  
7 Natera. Guardant’s CEO was permitted to testify that Guardant obtained Medicare  
8 coverage in “mid-2022,” but Natera was not permitted to elicit testimony from its  
9 expert regarding the [REDACTED] and  
10 that it occurred years after Natera obtained full coverage. Additionally, the following  
11 exhibits would have been offered for admission but for the Court’s prior rulings  
12 excluding evidence relating to MolDx: TX-535, TX-536, TX-597, TX-609, TX-610,  
13 TX-611.
- 14 • Testimony from the October 25, 2024 deposition of Dr. Claus Andersen (Proffer  
15 Exhibit B) that the Court excluded is relevant to establish Dr. Andersen’s state of  
16 mind and reaction to the Parikh Study, which is relevant to respond to Guardant’s  
17 allegations that Natera “targeted” Drs. Parikh and Corcoran with “attacks” and  
18 “pressure[d] these doctors to conceal their findings.” See Tr. at 202:15-23.  
19 Furthermore, Guardant designated testimony that Dr. Andersen stating that he did  
20 not use Reveal, and the testimony designated by Natera but excluded by the Court is  
21 relevant to why Dr. Andersen did not use Reveal in studies he conducted.
- 22 • Rebuttal testimony from Dr. Jeffrey Stec that Mr. Malackowski’s \$75 million in  
23 prospective corrective advertising damages opinions are flawed because: (a)  
24 Guardant had the financial means to engage in corrective advertising (other than  
25 comparative advertising) to mitigate its harm but has failed to do so; and (b) Guardant  
26 no longer sells the version of the product that is the subject of the Parikh study and  
27 the at-issue advertisements, and the current version is different. This testimony was  
28 fully within the bounds of the Court’s Order on Motion in *Limine* No 4. Dkt. 509 at  
17 (“[T]o the extent that Natera argues that Guardant had an obligation and failed to  
mitigate damages by engaging in *comparative* corrective advertising, the Court is  
inclined to find that it is permissible and necessary for Guardant to introduce at least  
portions of the Joint [Statement]. However, it was not permitted. 11/18/2024 Rough  
Tr. at 160:16-162:3.

DATED: November 18, 2024

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By /s/ Victoria F. Maroulis

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